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No. 88-387

IN THE

Supreme Court of the United States

October Term, 1988

ALCAN ALUMINIO DO BRASIL, S.A.,
Petitioner,

vs.

LUCRECIA HERNANDEZ,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

REPLY BRIEF OF PETITIONER

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I.

Rule 22.5

This *Reply Brief to Brief in Opposition to Petition for Writ of Certiorari* has been filed pursuant to Supreme Court Rule 22.5. This *Reply Brief* addresses arguments first raised in the Respondent's *Brief in Opposition.*

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I. THIS COURT HAS JURISDICTION OVER THIS ACTION.

Respondent argues that this Court does not have jurisdiction. Respondent is correct in asserting that Petitioner's opening brief incorrectly identifies the basis

for jurisdiction. Jurisdiction is predicated on 28 U.S.C. Section 1257, not on 28 U.S.C. Section 1254, as specified in the Petition.

Respondent recognized the error and argued that there is no jurisdiction under 28 U.S.C. Section 1257 because the order of the Florida courts is not final. Although the jurisdictional issue does not resolve the litigation, it does finally determine the jurisdictional issue. Contrary to the assertion of the Respondent, having appealed the jurisdictional issue, the matter cannot be raised again at the conclusion of the litigation. *Dade County Classroom Teacher's Association, Inc. v. Rubin*, 238 So. 2d 284, 289 (Fla. Sup. Ct. 1970) citing: *Rogers v. State ex rel. Board of Public Instruction*, 23 So. 2d 154 (Fla. Sup. Ct. 1945); *Ferguson v. Brogan*, 149 So. 772 (Fla. Sup. Ct. 1933); *Sanders v. State ex rel. D'Alemberti*, 90 So. 455 (Fla. Sup. Ct. 1921).

II. RESPONDENT IS INCORRECT THAT THERE ARE NO SUBSTANTIAL ISSUES IN THIS CASE.

Respondent argues that there are no significant issues of public policy in this case. Respondent predicates that proposition on a series of facts from a deposition transcript. Respondent's reliance on those facts is misplaced since there was no finding by the trial court that the facts asserted by the Respondent were true or that those facts were a basis for its decision.

The only findings of fact were made in the federal action. There the court found that Petitioner "sold its products to a Miami contractor." (See Appendix A9 of Petition for Writ of Certiorari.) It also found that it contracted with the "same independent contractors" to institute its recall campaign. *Id.* Thus the Respondent's recitation of facts from a deposition in this case as a basis for its arguments is inappropriate since the only trial court to have explicitly ruled on the matter apparently rejected those facts as untrue and/or unnecessary as a basis for its decision. That decision predated this Court's ruling in *Asahi Metal Industry Company, Ltd. v. Superior Court of California, Solano County,* 107 S. Ct. 1026 (1987). The Florida courts made no findings.

The Respondent's second basis for arguing that this case presents no novel issues is to argue the merits of the case. In doing so, the Respondent misstates a number of important facts. For example, Respondent attempts to distinguish the case of *Maschinenfabrik*

Seydelmann v. Altman, 468 So. 2d 286 (Fla. Dist. Ct. App. 1985), by saying that Seydelmann sold its products:

> [t]o a third party and Seydelmann had no control after the sale of the products. Seydelmann had no agent, salesman, or distributors in Florida.

Respondent's Brief in Opposition, at page 13.

In fact, the court in *Seydelmann* recognized that, contrary to Respondent's representation, Seydelmann did have a 22 year relationship with a Florida distributor, Reiser:

> Seydelmann manufactured grinders for sale in international commerce. For at least twenty-two years Seydelmann sold grinders to an American distributor for resale in the United States. Twenty-three grinders have been resold by the distributor for use in Florida. The total sale price of the twenty-three grinders sold to Florida users is approximately $750,000 and one may infer some indirect economic benefit to Seydelmann. . . .

Seydelmann, supra, 468 So. 2d 289.

In light of the fact that the total value of the Seydelmann sales is more than double the value of the Petitioner's sales and the Seydelmann relationship with Reiser was more than double the length of Petitioner's relationship with Diaz, who was a broker, not a distributor, Respondent's assertion that *Seydelmann* is distinguishable is without merit.

For this Court's convenience, Petitioner has included in the Appendix to its Petition both the briefs filed in the Florida state courts (A27-A36 & A37-A47) and its brief as Amicus Curiae in *Asahi Metal Industry Company, Ltd. v. Superior Court of California, Solano*

County, supra, at 2, (A51-A65). These briefs address the substantive arguments of the Petitioner in detail. Reference to these materials will demonstrate to this Court that the issues raised by this case can be the object of significant legitimate dispute, and should be explicitly resolved by this Court to provide the necessary law to foreign nationals who believe they are engaging in international commerce and surprisingly find themselves haled into a tribunal in the United States.

III. PETITIONER'S ASSERTION THAT THE FLORIDA COURTS ACTED IMPROPERLY BY NOT PREPARING AN OPINION IS PREDICATED ON TWO BASES:

(A) THE NEED TO EVALUATE WHICH ACTIVITES WILL OR WILL NOT LEAD TO THE IMPOSITION OF JURISDICTION.

(B) THE LACK OF AN OPINION BY THE FLORIDA APPELLATE COURT MAKES A PROPER REVIEW OF THIS CASE, IN LIGHT OF OTHER RELEVANT DECISIONS, EXTREMELY DIFFICULT.

Respondent asserts that Petitioner improperly argued that the Florida court's failure to issue an opinion as a basis for its decision is without merit. Petitioner respectfully disagrees.

Petitioner is being asked to defend a case involving less than $10,000 in a foreign country for a product it manufactured, sold and delivered in its own country. It is only fair that it be explicitly told what the basis is for that decision. Even if this Court were to find jurisdiction, Petitioner would be in a position to determine exactly what criteria it should apply in determining whether transactions taking place solely in another country will subject it to U.S. jurisdiction.

Moreover, a reasoned opinion is the only fair basis for review. This fact was recognized by the Florida Supreme Court when it declined to exercise jurisdiction because the absence of an opinion from the intermediate appellate court made such a review impossible. The

Florida Supreme Court, in the case of *Jenkins v. State of Florida*, 385 So. 2d 1356 (1980), the case cited for declining to exercise jurisdiction, set forth as follows:

> [W]e hold that from and after April 1, 1980, the Supreme Court of Florida lacks jurisdiction to review per curiam decisions of the several district courts of appeal of this state rendered without opinion, regardless of whether they are accompanied by a dissenting or concurring opinion, when the basis for such review is an alleged conflict of that decision with a decision of another district court of appeal or of the Supreme Court.

Id. 385 So. 2d 1341.

WHEREFORE, for the reasons set forth herein and in the *Petition for Writ of Certiorari*, the Petitioner requests that the Supreme Court issue an Order granting Certiorari, notwithstanding the Respondent's *Brief in Opposition*.

Respectfully submitted,

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